

SENATE BILL 1236

By McNally

AN ACT to amend Tennessee Code Annotated, Title 4,
Chapter 29; Title 8; Title 40 and Title 41, relative to
the inmate disciplinary oversight board.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 41-21-236, is amended by deleting
subdivision (a)(2)(A) and substituting:

(A)

(i) Each inmate who exhibits good institutional behavior or who exhibits
satisfactory performance within a program may be awarded time credits toward
the sentence imposed.

(ii) The credits awarded may vary between one (1) day and sixteen (16)
days for each month served, with not more than eight (8) days for each month
served for good institutional behavior and not more than eight (8) days for each
month served for satisfactory program performance.

(iii) Credits for good institutional behavior may be awarded by the inmate
disciplinary oversight board based on criteria established by the board and
recommendations of the warden.

(iv) Credits for satisfactory program performance may be awarded by the
warden based on the criteria established by the department.

SECTION 2. Tennessee Code Annotated, Section 41-21-236, is amended by deleting
subdivision (a)(3) and substituting:

(3) Sentence credits are not earned or credited automatically, but may be
awarded on a monthly basis.

(A)

(i) Credits for good institutional behavior may be awarded on a monthly basis at the discretion of the inmate disciplinary oversight board based on the criteria established by the board, and after receipt by the board of written documentation of an inmate's good institutional behavior and the warden's recommendation.

(ii) The responsible warden of each institution shall submit written documentation of an inmate's good institutional behavior and the warden's recommendation as to any award of sentence credits to the inmate disciplinary oversight board each month. The warden shall submit the written documentation required by this subdivision (a)(3)(A) by the fifteenth day of each month for the previous month.

(B) Credits for satisfactory program performance may be awarded on a monthly basis at the discretion of the responsible warden in accordance with the criteria established by the department, and only after receipt by the warden of written documentation evidencing the inmate's satisfactory program performance.

SECTION 3. Tennessee Code Annotated, Section 41-21-236(a)(5), is amended by redesignating the current language as subdivision (a)(5)(A) and adding the following new subdivisions:

(B) The inmate disciplinary oversight board shall make determinations on the removal under subdivision (a)(5)(A) of sentence credits previously awarded.

(C) The warden of each institution shall submit written documentation of an inmate's Class A disciplinary infraction or refusal to participate in a program to the inmate disciplinary oversight board by the fifteenth day of each month for the previous month.

SECTION 4. Tennessee Code Annotated, Section 41-21-236(a)(6), is amended by redesignating the current language as subdivision (a)(6)(A) and adding the following new subdivisions:

(B) The inmate disciplinary oversight board shall make determinations on the removal under subdivision (a)(6)(A) of sentence credits previously awarded.

(C) The warden of each institution shall submit written documentation of an inmate's refusal to participate in any assigned work, educational, or vocational training program to the inmate disciplinary oversight board by the fifteenth day of each month for the previous month.

SECTION 5. Tennessee Code Annotated, Section 41-21-236, is amended by deleting subsection (e) and substituting:

(1) Sentence reduction credits for good institutional behavior as authorized by this section may also be awarded to all convicted felons for the time incarcerated prior to the imposition of sentence. The total credit that a convicted felon may receive is calculated by determining the number of days actually served in jail prior to imposition of sentence and by adding to that number the sentence reduction credits awarded for good institutional behavior, if any, based upon the number of days served.

(2) The sentence reduction credits authorized by subdivision (e)(1) may be awarded at the rate of eight (8) days for each month served prior to imposition of sentence. In order to award credits pursuant to subdivision (e)(1), the superintendent or jailer shall provide the inmate disciplinary oversight board with written documentation evidencing the inmate's good institutional behavior and stating the number of sentence reduction credits, if any, the felon may be awarded and any recommendations of the superintendent or jailer. The board shall award the appropriate number of sentence

reduction credits, if any, based on the criteria established by the board and the recommendation of the superintendent or jailer.

(3) A convicted felon does not have a right to the credits authorized by subdivision (e)(1) or a right to appeal the inmate disciplinary oversight board's determination concerning the number of sentence reduction credits a particular felon should be awarded.

SECTION 6. Tennessee Code Annotated, Section 41-21-236, is amended by deleting subdivision (f)(1) and substituting:

(1)

(A) Except as provided in subdivision (f)(2), an inmate serving a misdemeanor sentence in a county jail, workhouse, or other local facility who exhibits good institutional behavior or who exhibits satisfactory performance within a program may be awarded inmate sentence reduction credits toward the inmate's release and expiration dates at the same rate and in the same manner as is provided in this section for inmates serving felony sentences.

(B) In order to award credits pursuant to subdivision (f)(1)(A), the local superintendent or jailer shall provide the inmate disciplinary oversight board with written documentation evidencing the inmate's good institutional behavior and stating the number of sentence reduction credits, if any, the inmate may be awarded. The board shall award the appropriate number of sentence reduction credits, if any, based on the criteria established by the board and the recommendation of the superintendent or jailer.

SECTION 7. Tennessee Code Annotated, Section 41-21-236(j), is amended by deleting the last sentence and substituting:

This section is applicable notwithstanding the powers granted pursuant to this title to reduce prison overcrowding.

SECTION 8. Tennessee Code Annotated, Section 41-21-236, is amended by adding the following as a new subsection:

(k) As used in this section, "board" means the inmate disciplinary oversight board created pursuant to part 10 of this chapter.

SECTION 9. Tennessee Code Annotated, Title 41, Chapter 21, is amended by adding the following as a new part:

41-21-1001.

As used in this part:

- (1) "Board" means the inmate disciplinary oversight board;
- (2) "Commissioner" means the commissioner of correction;
- (3) "Department" means the department of correction;
- (4) "Executive director" means the officer employed by the board as the chief administrative officer of the agency; and
- (5) "Sentence credits" means any credit, whether called that or not, that results in a reduction of the amount of time an inmate must serve on the original sentence or sentences.

41-21-1002.

(a) There is created a full-time, autonomous inmate disciplinary oversight board. The purpose of the board is to grant or deny inmate sentence credits for good institutional behavior and to determine whether sentence credits previously awarded should be removed for commission of a major infraction designated by the department as a Class A disciplinary offense or for an inmate's refusal to participate in an assignment.

(b) The board is composed of seven (7) members who shall be appointed by the governor, the speaker of the senate, and the speaker of the house of representatives as follows:

(1) Two (2) members of the board shall be appointed by the governor;

(2) Two (2) members of the board shall be appointed by the speaker of the senate;

(3) Two (2) members of the board shall be appointed by the speaker of the house of representatives; and

(4) One (1) member of the board shall be appointed by the speaker of the senate and the speaker of the house of representatives jointly.

(c) The board is autonomous in structure and has the authority to perform all administrative functions necessary to carry out its duties, including the submission of budget requests to the commissioner of finance and administration and the submission of personnel actions to the commissioner of human resources.

(d) In all respects the board is separate functionally and administratively from any other agency. In performing the administrative and financial functions necessary to its operations, the board and its employees are subject to the budgetary, accounting, personnel, purchasing, and audit requirements, as well as other administrative requirements, applicable to all state departments and agencies pursuant to title 4, chapters 3 and 4.

(e) In making the initial appointments made under this section, the speaker of the senate and the speaker of the house of representatives shall jointly appoint one (1) member to a term expiring on January 1, 2028. The speaker of the senate shall appoint one (1) member to a term expiring on January 1, 2027, and one (1) member to a term expiring on January 1, 2027. The speaker of the house of representatives shall appoint

one (1) member to a term expiring on January 1, 2028, and one (1) member to a term expiring on January 1, 2028. The governor shall appoint two (2) members to a term expiring on January 1, 2026. Thereafter, all members shall serve six-year terms and are eligible for reappointment.

(f)

(1) In considering persons for appointment, the appointing authority shall give preference to candidates with training, education, or experience in the criminal justice system, law, corrections, behavioral science, or mental health. A member of the board shall not hold any other salaried public office, whether elective or appointive, and a member of the board shall not engage for pay in any other business or profession.

(2) In making appointments, the appointing authorities shall strive to ensure that the board is composed of members who represent the geographic, urban, rural, and economic diversity of this state and who are diverse in race, sex, perspective, and experience.

(g)

(1) Vacancies occurring in an office of a member of the board before the expiration of a term by reason of death, resignation, removal, or any other reason shall be filled in the same manner as the regular appointment for the remainder of the unexpired term.

(2) An appointed member of the board serves in such capacity until the expiration of the term to which the member was appointed and until the member's successor is duly appointed and qualified. This service requirement is in accordance with Article VII, Section 5 of the Constitution of the State of Tennessee and common law.

(h) The governor, the speaker of the senate, the speaker of the house of representatives, or the attorney general and reporter may seek the removal of a member of the board for knowing or willful misconduct in office or for knowing or willful neglect or failure to perform a duty enjoined upon a member of the board by a law of this state or for the conviction of a crime that constitutes a felony under the laws of this state. The removal must be accomplished through the removal procedure provided in title 8, chapter 47.

(i) The members of the board shall elect one (1) member of the board to serve as its chair for a term of two (2) years beginning January 1 of the appropriate year. The chair shall direct the operation of the board and shall fulfill the functions established by statute, unless duties and responsibilities are otherwise assigned under this part. The board may designate one (1) of its members to act as chair during the absence or incapacity of the chair, and when so acting, the member so designated has and performs all the powers and duties of the chair of the board.

41-21-1003.

(a) The board has those powers and duties necessary and proper to enable the board to fully and effectively carry out this part, including, but not limited to:

(1) The authority to select and recommend to the appropriate state officials the employment or transfer of all personnel required for the operation of the board; except the initial transfer of a preferred service employee shall not result in impairment, interruption, or diminution of employee rights, salary, benefits, leave accumulation, or employment. The commissioner of human resources is authorized to determine if there has been any impairment of rights, salary, benefits, leave accumulation, or employment as a result of a transfer. A preferred service employee may seek redress of a determination through a

request for a declaratory order by the commissioner of human resources pursuant to § 4-5-223;

(2) The authority to promulgate reasonable substantive and procedural rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(3) The authority to develop and implement guidelines for granting and removing good institutional behavior credits. The board shall review and reevaluate the guidelines at least annually and provide copies of the guidelines to the governor, the speaker of the senate, the speaker of the house of representatives, the commissioner of correction, and the appropriate standing committees of the senate and the house of representatives;

(4) The authority to prescribe all forms to be used by the board in the transaction of the board's business;

(5) The authority to adopt an official seal by which the board's acts and proceedings are authenticated, and of which a court or other officials concerned with the actions of the board shall take judicial notice. The certificate of the chair of the board, under seal and attested to by the executive director, shall be accepted in any judicial or administrative proceeding as adequate and sufficient proof of the acts and proceedings of the board as described therein;

(6) The authority to employ other employees and to incur such other expenses, within the limits of appropriations, as necessary for the proper discharge of the board's duties;

(7) The duty to work cooperatively with the department of correction in developing criteria for the award of sentence credits for good institutional behavior;

(8) The duty to keep appropriate records of all of the board's official actions and to make them accessible in accordance with law and the regulations of the board;

(9) The duty to adopt written long-range goals and objectives. The goals and objectives must be reaffirmed or changed, as appropriate, by the board at least once each year;

(10) The duty to adopt written policies and procedures to govern the board's internal operations. It is the legislative intent that the board has the authority to freely adopt policies and procedures to meet the board's particular needs. Prior to final board adoption of the policies and procedures and prior to change, the board shall submit a draft to the attorney general and reporter for review and comment; and

(11) The authority to employ staff attorneys who are licensed to practice law in this state and to employ others as the board deems necessary.

(b) As soon as is convenient after appointment, the members of the board shall meet and organize. The members shall appoint an executive director who shall be the chief administrative officer of the board and whose duties include:

(1) Supervising the scheduling of board meetings;

(2) Assisting the board in the formulation, development, and implementation of procedures and policies;

(3) Assisting in the preparation of the necessary forms and maintaining the records required for decisions of the board;

(4) Conducting conferences and managing correspondence with interested persons;

(5) Supervising all employees of the board; and

(6) Developing and maintaining communication and cooperation between the board and other state agencies.

41-21-1004.

(a) The permanent office of the board is at Nashville.

(b) The board shall meet at least monthly at a time and place prescribed by the board. The board must take all votes by public ballot or public roll call. Secret ballots or secret roll calls are not permitted.

(c) The salaries of the members of the board shall be established by the governor at no more than eighty-five percent (85%) and not less than sixty percent (60%) of those established for Class 2 state officials under § 8-23-101. A member's salary cannot be diminished during the term of the member's appointment. The salaries of the members of the board must be equal, except that of the chair, whose salary shall be set by the governor at a level commensurate with the increased duties and responsibilities. The salaries of employees of the board are set by the board. The requirements of § 40-28-103(a) regarding personnel procedures apply to all actions under this subsection (c).

(d)

(1) A majority of members of the board constitutes a quorum for official administrative business.

(2) The grant of sentencing credits for good institutional behavior requires the concurrence of four (4) board members.

(3) The removal of previously awarded sentencing credits requires the concurrence of four (4) board members.

(e) When appropriate, the members of the board and the board's employees shall be reimbursed for reasonable and necessary travel expenses in accordance with the state comprehensive travel regulations.

41-21-1005.

The warden of each prison and all officers and employees of each prison and all other public officials shall at all times cooperate with the board and shall furnish to the board, its officers, and employees information as may be necessary to enable the board to perform its functions, and the wardens and other employees shall at all times give the members of the board, its officers, and employees free access to all prisoners confined in the prisons, workhouses, and jails of this state.

41-21-1006.

Notwithstanding another law to the contrary, the department of correction is responsible for calculating the sentence expiration date and the earliest release date of a felony offender sentenced to the department of correction and a felony offender sentenced to confinement in a county jail or workhouse for one (1) or more years.

SECTION 10. Tennessee Code Annotated, Section 4-29-246(a), is amended by inserting the following as a new subdivision:

() Inmate disciplinary oversight board, created by § 41-21-1001;

SECTION 11. Sections 1 through 8 of this act take effect January 1, 2024, the public welfare requiring it. For purposes of appointing members and organization, Section 9 of this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, Section 9 of this act takes effect January 1, 2024, the public welfare requiring it. Section 10 of this act takes effect January 1, 2024, the public welfare requiring it.